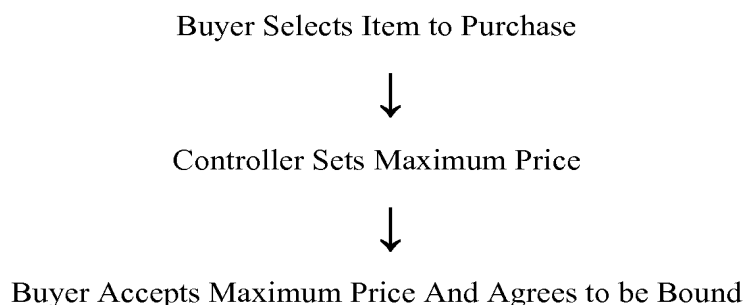


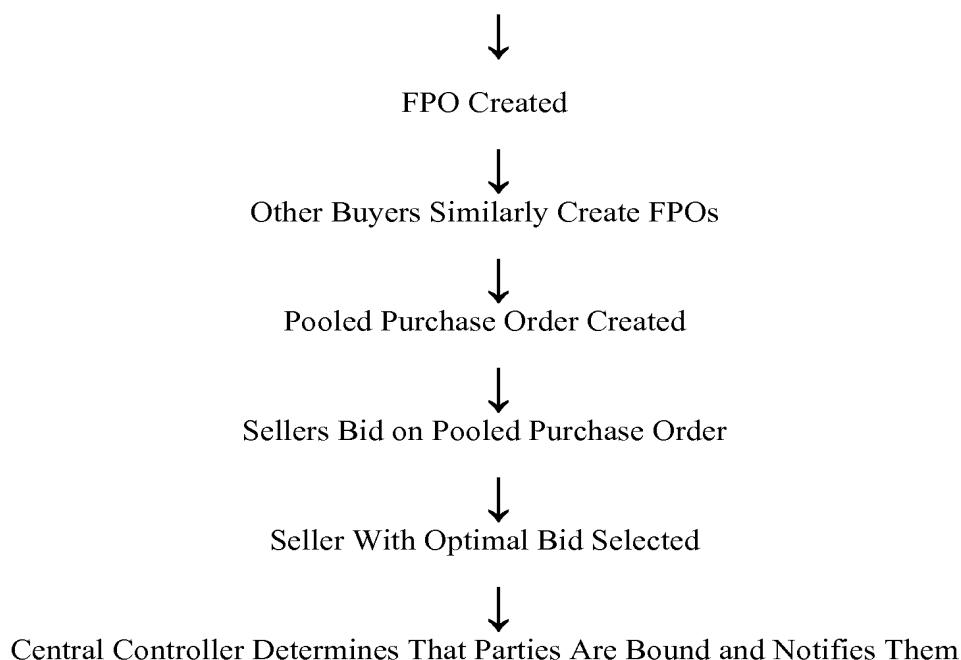
**REMARKS**

Applicant notes with appreciation the Examiner's withdrawal of the previous art rejections over Odom. Claims 104 are pending in the application. Claims 1-4 stand rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent No. 6,260,024 to Shkedy ("Shkedy"). This rejection is respectfully traversed for the reasons set forth below.

Shkedy, particularly those portions cited by the Examiner, discloses a computer acting as an intermediary to facilitate a transaction between a plurality of buyers and at least one seller. A first buyer logs onto a central controller and selects an item or service to be purchased. The central controller then gives the buyer a maximum price, and the buyer accepts the maximum price, thereby agreeing to be bound and creating a Forward Purchase Order ("FPO"). See, e.g., col. 12, lines 56-62; col. 5, lines 42-60. Other buyers create other FPOs in a similar manner. Items in an FPO that match items in FPOs from other buyers are extracted to create a Pooled Purchase Order ("PPO"). See, e.g., col. 15, line 58, to col. 16, line 6. PPOs are made available to potential sellers. See, e.g., col. 16, lines 1-38. Sellers bid on PPOs. The optimal bid is calculated by the central controller, and the deal is awarded to the corresponding seller. See, e.g., col. 12, line 65-col. 13, line 1; FIG. 9; col. 27, lines 19-20. The central controller determines that the parties are bound, and contacts the buyer and the seller to indicate that they are mutually bound. See col. 13, 1-3; col. 26, lines 33-37; col. 3, lines 6-8.

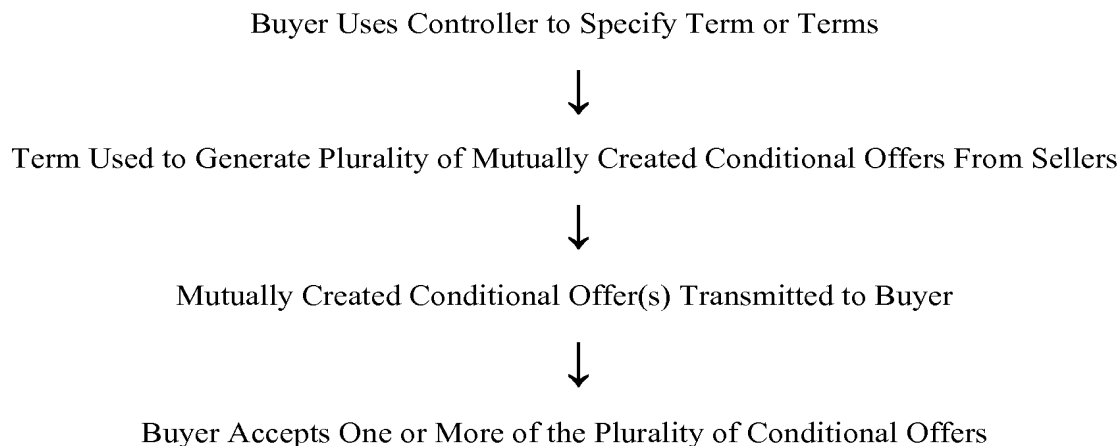
In short, Shkedy's process operates as follows:





Applicant's presently claimed invention, on the other hand, is fundamentally different than that of Shkedy. In accordance with the present claims, the process begins with the controller allowing the buyer to specify, via an electronic network, at least one term consisting of minimum quantities the buyer would agree to purchase, minimum quantities the buyer would accept, the minimum length of time to which the buyer would agree to be bound to purchase the minimum quantities containing the minimum qualities, and the maximum or minimum price the buyer would pay. Based upon the buyer's specification of that term or terms, a plurality of mutually created conditional original sales offers from a corresponding plurality of sellers are generated. Each of these mutually created original sales offers includes at least that term specified by the buyer and at least one term specified by one of the sellers, the latter being different than that term specified by the buyer. One or more of the conditional original sales offers are transmitted to the buyer. The buyer then accepts, via the network, one or more of the conditional original sales offers.

In short, the presently claimed process operates as follows:



The most glaring difference between the claimed invention and the disclosure of Shkedy is that Shkedy fails to teach or suggest, in any manner, a system that transmits one or more mutually created conditional original sales offers to a buyer. This limitation is positively recited in the penultimate step of the presently claimed method:

using said electronic network to transmit at least one of said  
mutually created conditional original sales offers to said buyer;  
and

Shkedy fails to teach or suggest that claim limitation. Furthermore, Shkedy fails to teach or suggest a system that receives via an electronic network the buyer's acceptance of that at least one mutually created conditional original sales offer. Such limitation is positively recited in the final step of the presently claimed method:

receiving via said electronic network said buyer's acceptance  
of said at least one mutually created conditional original sales  
offer.

Shkedy's failure to teach or suggest a system which includes either of the above two claim limitations is significant. Such failure results in a system wherein the buyer does not have the power to make a final decision to be bound, after receiving all or substantially all of the terms of sale. Indeed, in accordance with Shkedy, the central controller/intermediary determines that the parties are bound to a price that may or may not even be known to the buyer.<sup>1</sup>

In accordance with the presently claimed system, on the other hand, the buyer is empowered to make the final decision to be bound, after he knows the terms of the transaction, via his acceptance of one or more mutually created conditional original sales offers from one or more sellers that are transmitted to the buyer.

In view of all of the above, Shkedy fails to teach or suggest limitations set forth in Applicant's independent claim 1. The Court of Appeals for the Federal Circuit has consistently held that "Anticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, arranged as in the claim." Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick, 221 USPQ 481, 485 (Fed. Cir. 1984). Therefore, it is respectfully submitted that the rejection of claims 1-4 as being anticipated by Shkedy is improper and should be withdrawn. With respect to claims 2-4 only, the invention set forth in those claims is further patentable over Shkedy because Shkedy further fails to teach or suggest the step of revealing to the seller the buyer's personal or financial information after the buyer accepts at least one original sales offer, fails to teach or suggest sales offers which are conditional upon subsequent approval of the buyer's personal or financial information, and fails to teach or suggest a process wherein the buyer is not bound by the specification of terms, respectively.

## **CONCLUSION**

Having overcome all objections and rejections, it is respectfully submitted that claims 1-4 are in condition for allowance and Notice to that effect is specifically requested. Should the Examiner determine that any further action is necessary to place this application into better form for allowance, the Examiner is encouraged to telephone

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<sup>1</sup> While obviousness over Shkedy is not an issue, it is noted that Shkedy clearly teaches away from the present invention in this respect. See, e.g., Shkedy at col. 3, lines 6-8, and col. 5, lines 43-60.

the undersigned representative at the number listed below. The Commissioner is also authorized to charge additional fees to Deposit Account No. 50-0653.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Richard E. Kurtz", written over a horizontal line.

Date: February 21, 2006

By: \_\_\_\_\_

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Registration No. 33,936

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